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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Ad Hoc Working Party on
International Road Transport Contract
(First Session)

DRAFT REPORT OF THE AD HOC WORKING PARTY ON ITS FIRST SESSION

1. The Ad Hoc Working Party on International Road Transport Contract held its first session from 12 to April 1955, under the chairmanship of Mr. G. de Sydow (Sweden). Representatives participated from Austria, Belgium, France, Italy, the Netherlands, Sweden, Switzerland, the United Kingdom, the Western Zones of Germany, and Yugoslavia.* The following international organizations were also represented:* International Institute for the Unification of Private Law (IIUDP), International Chamber of Commerce (ICC) and International Road Transport Union (IRU).

2. The Working Party adopted the provisional agenda (TRANS/WP9/29) submitted by the Secretariat.

3. The Working Party took as a basis for its studies the preliminary draft convention proposed by the Small Committee of Legal Experts (TRANS/WP9/22). It also took into consideration the comments received by the Secretariat from France (TRANS/WP9/28 Add.1), the Netherlands (W/TRANS/WP9/34), Switzerland (TRANS/WP9/28) and the Western Zones of Germany (W/TRANS/WP9/35 and Add.1 and 2).

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* See list of delegations.

4. The Working Party prepared an amended draft convention (Annex 1).[1] Comments and reservations made during the discussions are given below.

Article 1, paragraph 4

5. The United Kingdom representative would have preferred the Convention not to apply to the transport of goods for account of military authorities, and he reserved his Government's position regarding the application of the Convention in the event of the total capacity of a vehicle being placed at the disposal of such authorities.

6. The French representative also reserved his position with regard to the application of the Convention to transport operations carried out under the control of military authorities.

7. The Working Party specified that the term "international postal convention" as used in sub-paragraph (a) also covered bilateral agreements concluded in connexion with such conventions.

Article 1, paragraph 4(a)

8. The representative of the Western Zones of Germany suggested that the following text be substituted for this paragraph:

> "The Convention shall not apply to transactions between a postal administration and users, nor between the postal administrations themselves."

This suggestion was not accepted by the Working Party, and the representative of the Western Zones of Germany entered a reservation, while expressing his readiness to ask his Ministry to reconsider the problem in consultation with the Ministry of Postal Services.

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(1) See document W/TRANS/WP9/40/Rev.1.

Article 2

9. As regards the provisions to be applied where, in the case of carriage by road, a part of the journey is effected by some other mode of transport, most of the members of the Working Party were in favour of the system of making the Convention applicable to the whole of the carriage where the entire operation was covered by a single contract, subject to the condition that the provisions of the law applicable to the part of the carriage by another mode of transport over part of the journey governed the carrier's liability where it was proved that loss, damage or delay in delivery had occurred in the course of, and by reason of, such carriage by another mode of transport.

10. It was deemed necessary to specify that point - that recourse to the law applicable to the part of the carriage other than carriage by road was subject to proof that the loss, damage or delay had occurred not only in the course of carriage by another mode of transport but also by reason of such carriage - in order to make it clear, first, that in the case in point the road carrier's liability in respect of the part of the carriage by another mode of transport could not exceed, as regards both extent and limit, that of the carrier effecting the part of the carriage by another mode of transport; and secondly, that the terms of article 2 could not relieve the road carrier of his liability under the terms of the present Convention even where the prejudice occurred during the part of the carriage by another mode of transport if such prejudice was attributable to the road carrier or his agents.

11. The United Kingdom delegation entered a reservation regarding the version adopted by the Working Party and expressed its preference for a different version (reproduced in Annex 2)*.

12. While declaring the text adopted by the Working Party acceptable, the representative of the Western Zones of Germany expressed his preference for a text which would leave less room for exceptions to the present Convention in the case of carriage by road where part of the journey was effected by another mode of transport, and instanced the text which had been submitted by the Drafting Committee as a possible variant (also reproduced in Annex 2).

Paragraph 1

13. The French and Swiss representatives entered reservations concerning the application of the convention, under the "paramount" clause, in a non-Contracting State.

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* See document W/TRANS/WP9/41

Article 4

14. The representative of the Western Zones of Germany would have preferred a single transport document since he feared that the provision calling for three original copies would create difficulties. He even questioned the usefulness of having a duplicate copy as in the case of the CIM, where its existence had given rise to many technical and legal difficulties for rail traffic. He was told that the right to dispose of the goods would be affected and also that this system had proved its effectiveness in connexion with the CIM.

Article 5

15. The Working Party tried to bring this provision as far as possible into line with article 2 of Annex D.1 to the Set of Rules (Waybill).

16. It nevertheless considered the note referring to item (17) of paragraph 2 of article 2 of Annex D.1. "The absence of any entry under this item is equivalent to the entry: 'No pre-arranged time limit'" to be superfluous and deleted it. The Working Party draws the attention of the Working Party on the International Road Transport Regime to its decision and requests it to do likewise when revising Annex D.1. to the Set of Rules.

17. The French Government had suggested the inclusion among the compulsory particulars to be shown on the consignment note the date of taking over the goods (TRANS/WP9/28 Add.1). The Working Party considered, however, that a carrier would not sign the consignment note until he had taken over the goods. In this connexion it was pointed out that under article 8, paragraph 1, the consignment note is regarded as prima facie evidence of the receipt of the goods by the carrier.

Article 5, paragraph 1

18. The term "ordinary designation of the type of goods" was preferred to the term "description of the goods" in order to eliminate the use of trade names for goods, labels, etc.

Paragraph 2(a)

19. The wording here differs from that of Annex D.1 (Article 2, paragraph 2(12)), in order to indicate that the sender can forbid transshipment (transloading) only in certain cases.

Paragraph 2(c)

20. The Working Party considered the wording here clearer than that of Annex D.1 (Article 2, paragraph 2(14)).

Paragraph 2(g)

21. The Working Party preferred this wording in order to allow for the fact that documents may not always accompany the goods. The new text is in conformity with article 10, paragraphs 1 and 3, of the Convention, which is based on the text of article 6, paragraph 6(g) of the CIM.

Article 6

22. The representative of the Western Zones of Germany suggested that the text of paragraph 1 be amended to bring it into line with the more general and wider terms of article 7, paragraph 1, of the CIM. In particular, he considered that the details shown under (a), (b) and (c) were incomplete. The Working Party preferred not to take over the CIM wording but extended the list of particulars to cover all those for which the sender is responsible.

Articles 7 and 8

23. The representatives of Austria, Belgium and France would have preferred a provision that would have obliged the carrier also to check the gross weight of the goods or their quantity otherwise expressed, i.e.

that the following sub-paragraph be added to article 7, paragraph 1:

"(c) the gross weight of the goods or their quantity otherwise expressed."

that paragraph 2 of article 7 mention:

"the accuracy of the statements referred to in items (a) and (c) of paragraph 1 ..."

that the third paragraph of article 7 begin with the words:

"The sender may require the carrier to check the contents of the packages. The carrier shall also be entitled to claim ..."

that the end of paragraph 2 of article 8 be worded as follows:

"and that the number of packages, their marks and numbers, and the gross weight of the goods or their quantity otherwise expressed corresponded with the statements in the consignment note".

Article 11

24. The Austrian representative and, to some extent, the Belgian and Swiss representatives, would have preferred the addition of the following paragraph 3 bis:

"This right may also pass to the consignee after the goods have been taken over by the carrier and before they arrive at the place designated for delivery, if the first copy of the consignment note has been handed by the sender to the consignee."

25. The Working Party discussed the advisability of adding the following paragraph 7 to this article:

"A carrier who has not carried out the instructions given under the conditions envisaged in this article, or who has carried them out without requiring the first copy of the consignment note to be produced shall be liable to the person entitled to make a claim for any loss or damage caused thereby."

26. The Working Party decided not to insert this provision since the carrier's liability for failure to carry out provisions of the contract other than those concerning the carrier's liability (Chapter III) is covered by ordinary law on contractual liability.

Article 13

27. The representative of the Western Zones of Germany drew attention to the objections by the competent authorities to the principle embodied in this article, and upheld their proposal to mitigate the carrier's responsibility to do his best, on his own initiative if necessary, in the interests of the consignment.

Chapter V - Liability of the Carrier

Article 16, paragraph 3

28. The representative of the Western Zones of Germany had stated that the carrier should be liable for the risks inherent in the transport operation even where no wrongful act or omission could be attributed to him. Accordingly, he proposed the following text:

"2. The carrier shall be relieved of such liability if the delay in delivery, loss of the goods or damage thereto was caused by a wrongful act or omission on the part of the person entitled to dispose of the goods, or an order given by him not arising from a wrongful act or omission on the part of the carrier, or an inherent defect in the goods, or circumstances not connected with the operation of the transport service, which the carrier could not avoid and the consequences of which he could not prevent."

29. This proposal was supported by the Austrian representative, but the Working Party decided to keep to the text in the Annex.

30. The United Kingdom representative would have preferred to round off the paragraph by adding: "(loss or damages arising) to cover stoppages, lock-outs or restraints of labour for which the carrier may be held to have some measure of control". The Working Party preferred to keep the text as it stood, but decided to insert a clause to that effect in the protocol of signature. The United Kingdom representative reserved his position for the time being.

Article 19

31. The United Kingdom representative would have preferred to substitute the following paragraphs for paragraph 1:

"1. Where the goods have not been delivered within the agreed time-limit, or, if there is no agreed time-limit, within 30 days from the time when the carrier took the goods into his charge, the person entitled to make a claim for the loss of the goods shall, within 7 days thereafter, give notice to the carrier in writing of such non-delivery.

"2. The person entitled to make a claim for the loss of the goods may, without being required to furnish other proof, treat the goods as lost if they have not been delivered within 30 days following the giving of such notice. If no such notice has been given, he shall not be entitled to claim the benefit of this paragraph."

32. The Working Party noted that the person entitled to make a claim was not obliged to act in accordance with paragraph 1 of article 19 of the Convention, and that he could accept the goods after expiry of the time-limit. Where he acted in accordance with paragraph 1, there was a presumptio juris et de jure, and hence a presumption unchallengeable by the carrier, that the goods had been lost.

Article 21, paragraph 2

33. The Austrian representative felt that it would be unfair not to grant compensation in the circumstances considered in this paragraph. The majority of

the members of the Working Party were not of his opinion. The Austrian representative reserved his position. The Working Party made it clear that the paragraph must not be interpreted as affecting national customs regulations.

Article 22

34. The representatives of Italy and the Netherlands held that the compensation mentioned in paragraph 1 should be calculated in accordance with the value of the goods at the place of destination. The majority of the Working Party however preferred to keep the attached text. The Italian representative reserved his position.

35. The representative of the Western Zones of Germany pointed out that under Western German law lucrum cessans might also be required, and he would have preferred to see a provision on those lines included in the Convention. But the proposed addition was considered by the Working Party to be inadvisable.

Limitation of Carrier's Liability

36. The Working Party took note of the communication from the Netherlands Government (W/TRANS/WP9/34) and that submitted jointly by the ICC and IRU (TRANS/WP9/30).

37. The United Kingdom representative felt that the average value of goods should be adopted as the basis. Where the actual value exceeded the average, it was the carrier's responsibility to declare it. The rate of five gold francs per kg of total weight, as adopted in the United Kingdom, amply sufficed.

38. In the Belgian representative's view, insurance below the limit fixed (say eighteen gold francs per kg missing) could be considered in cases where the goods normally transported by a given undertaking were of lower average value. It would be very easy to increase the subscription policy for consignments of greater value than that normally insured. The Belgian representative had at first been in favour of a higher limit of liability; however, in view of the possibilities afforded by article 23, which provided a solution to the problem in practice, he, too, was able to agree to the limit of eighteen gold francs.

39. The representative of the Western Zones of Germany said that the maximum for road carrier's liability was very high there. The system had shown excellent results for many years. Carriers and users were therefore unanimous in wishing its retention. In particular, the German road carriers considered that they would be put in a very unfavourable position and would lose traffic to the railways if their maximum liability was fixed at a rate substantially lower than that stipulated for railways in the CIM (100 gold francs). Despite the high maximum liability, German insurance premiums were very low. They were based on the transport charge (1 - 3.5% of the freight charge). The premium rate depended on the carrier's risks under the liability system, which were primarily determined by the comparatively low average value of all the goods carried by road. However, the maximum liability must also cover risks involved in the transport of extremely valuable goods, which was fairly common. Experience stretching over some twenty years had made it possible to fix the present low premiums, which were quite adequate for the insurers.

40. The Netherlands representative pointed out that insurers in his country calculated premiums not in relation to the value of the goods but in the light of maximum liability.

41. The French representative said that while he could accept the figure proposed in the agreement reached between the ICC and the IRU, if the Working Party found it impossible to endorse that agreement, his Government would then be obliged to reserve its position, in order to indicate its view that the limit could not be lower than twenty-five gold francs per kg missing.

42. The Austrian representative submitted that too much importance was being attached to the limit figures. Actually, the insurance companies fixed premiums in relation to the actual cost of the loss or damage.

43. The Swiss representative was unable to express an opinion on the question, having received the relevant documentation too late.

44. After discussion, it was noted that Austria, Belgium, Italy, Sweden, Yugoslavia and - subject to certain conditions - France could accept the limit of eighteen gold francs per kg missing, but that the United Kingdom and the Netherlands urged a lower limit, while the Western Zones of Germany stood by their proposal for a limit of one hundred gold francs.

45. The Working Party decided to insert in the Convention the figure of eighteen gold francs per kg missing, while noting that full agreement had not yet been

reached on the question; and it requested the governments to review their position in preparation for the special meeting scheduled for 1956, at the conclusion of which the convention was due to be signed. At the Chairman's request, the Netherlands and United Kingdom representatives agreed to endeavour to persuade their Governments to make concessions, as the only way in which agreement could be reached on the matter.

46. The representative of the Western Zones of Germany said that he might find it possible to accept the joint ICC and IRU proposal on condition that the competent authorities were given the possibility of imposing a higher limit of liability on undertakings having their operational headquarters in the Western Zones, this possibility to be embodied either in the convention or in the protocol of signature.

47. The Working Party considered that the provision of this possibility would jeopardize the unification deemed essential in that field and urged the representative of the Western Zones of Germany to seek to have the position of the authorities of the Zones reconsidered.

Article 24

48. The Working Party had considered replacing paragraph 1 by the following text:

> "In the case of damage to goods, the carrier shall be liable for the amount by which the goods have diminished in value, but no further compensation shall be payable. This amount shall be calculated on the basis of the compensation which would be due under article 22 in the case of loss without being subject to the limit paid down in this article, reduced by a sum which bears the same proportion to the amount so calculated as the value of the damaged goods at the place of delivery bears to the value of the same goods at the same place had they not been damaged during performance of the contract of carriage."

49. After discussion, the Working Party noted that the above text and the text adopted were, if the latter was compared with articles 22 and 23, very similar in effect, and preferred the simpler text.

Article 26

50. The IRU representative said that, during the talks which had taken place when the limit of 18 gold francs was being arranged with the ICC, it had been pointed out that carriers could agree higher limits with their customers and

that the authorities of the Western Zones of Germany, for example, could impose a higher limit on their nationals.

Article 27, paragraph 1

51. It was specified that not only the provisions concerning the limitation of liability but all the provisions of the convention applied.

Paragraph 2

52. The Austrian representative suggested the deletion of this paragraph, on the ground that relations between persons not parties to the agreement should not be governed by the convention. The Working Party decided to retain the paragraph.

Article 28

53. The Austrian representative, citing difficulties arising from the law of his country, would have preferred the substitution of the words "gross negligence" for the words "default equivalent to wilful misconduct". He was informed, in reply, that this wording had been chosen to allow for the fact that the concept of "gross negligence" was not known in United Kingdom legislation.

Chapter IV. Claims and Actions

54. For practical reasons and in the interest both of the carrier and of the person entitled to dispose of the goods, the Belgian representative proposed that the person entitled to lodge claims or bring actions should be specified, as in the CIM, and that his right to do so should be linked with the right to dispose of the goods as governed by article 11 of the draft. In his view, such a provision would have the effect of saving the carrier from having to make payments to persons other than the one entitled to dispose of the goods, and of lessening the number of actions brought. The IRU representative supported this view.

Article 30, paragraph 1

55. In document TRANS/WP9/28, the Swiss Government had recommended re-examination of this paragraph, its contention being that it was going too far to give the consignor and the consignee the right to bring legal proceedings against the carrier at the place of destination and not merely at the place where he was ordinarily resident. The Working Party did not share that view. The Swiss representative reserved his position on that point.

Paragraph 2

56. The competent authorities of the Western Zones of Germany had expressed the desire that this provision should be more clearly formulated. The Working Party

turned down that suggestion, being of the opinion that article 20 was sufficiently clear, and that it covered not only the case where an action was pending but also that where a judgment had been given.

Paragraph 3

57. In reply to a question by the representative of the Western Zones of Germany, it was explained that the general terms used in this provision unquestionably covered judgments entered by default.

58. The representative of the Western Zones of Germany suggested that, in the sense in which it is used in paragraph 3, the term "awards" should include other decisions by which proceedings were terminated, for example, writs of execution in German law, judicial compromises and arbitral awards. The Working Party did not accept this proposal with regard to writs of execution. So far as concerned arbitral awards, it considered thatthey need not be specifically mentioned, in view of the regulations already in force or in preparation. As to judicial compromises, while attaching due importance to them, it thought that to rank them with the "awards" referred to in paragraph 3 might create other difficulties. On the other hand, the Working Party took the view that an explicit provision should be inserted in the Protocol of Signature ranking judicial compromises with the awards referred to in this paragraph.

Article 30

59. The term "judgment", which is interpreted in the protocol of signature as including judgments after trial, judgments entered in default and judicial compromises, does not cover writs of execution. The Working Party made it clear that the reference in paragraph 4 to the failure of the plaintiff's action covered also cases of partial failure, thus allowing for the award of damages in the event of an excessive claim.

Article 31, paragraph 2

60. The IRU representative proposed the addition to this paragraph of a provision requiring the person lodging the claim with the carrier to submit the consignment note in proof of his right to claim (see the CIM, article 41, paragraph 3). His proposal was rejected by the Working Party. Disagreeing with the Working Party's decision on this point, the Swiss representative entered a reservation.

Article 34

61. Referring to the observations by his Government (TRANS/WP9/28), the Swiss representative emphasized that difficulties as to competence would arise if legal proceedings in respect of liability for loss, damage or delay could be taken against more than one of the carriers mentioned in this article. The Working Party took the contrary view, and the Swiss representative reserved his position on the subject.

Articles 33 and 34

62. The Netherlands representative considered that the second or any succeeding carrier should not be liable until after he had entered his name and address on the second copy of the consignment note.

63. Supporting the Netherlands representative, the IRU representative said that the very principle of successive transport operations raised certain misgivings as regards safeguarding the carriers' interests. He hoped that every care would be taken to ensure that successive carriers were fully aware of the obligations imposed on them under the transport contract.

64. The Working Party decided to retain the present texts of articles 33 and 34.

Article 48

65. The Swiss representative proposed that the right to refer a dispute to the International Court of Justice should be subject to the agreement of the Contracting Parties concerned. His proposal was rejected by the Working Party.

Way-bill (consignment note) representing a title to the goods

66. After hearing the arguments of the representative of the IIUDP in favour of the way-bill representing a title to the goods, most representatives took the view that the question was not ripe for discussion and that neither users nor carriers saw any need for such a document at the moment. It was decided to delete this chapter, although the Working Party stressed that the question might be re-opened later in the light of further developments.

Removals

67. The Working Party felt unable to agree upon provisions for removal transport by road unless they were made applicable to all removals irrespective of the mode of transport used. It therefore decided not to draft for the time being the Annex relating to unpacked furniture, carried during removals, but to mention removal transport in article 1. The Working Party thought it both unnecessary and very difficult to define removal transport.

68. The Swiss representative reserved the position of the Federal authorities on the question whether the Swiss Government would sign the present Convention should it not apply to removals.

PROCEDURE FOR BRINGING THE CONVENTION INTO FORCE

69. The Working Party suggested that the Executive Secretary should request governments to submit their comments by 1 December 1955, since the date of the present session had been put forward. The Inland Transport Committee might possibly, with the replies received in December before it, put forward the date of the special meeting for the final review and signature of the Convention.

PROPOSALS FOR ANNEX D.2 TO THE SET OF RULES ANNEXED TO THE GENERAL AGREEMENT

70. By resolution No. 71 (E/ECE/TRANS/470) of the Sub-Committee on Road Transport, the Working Party was instructed to formulate proposals for Annex D.2 to the Set of Rules (carrier's liability). The Working Party took the view that the drafting of the Convention created a new situation which made Annex D.2 to the Set of Rules superfluous, but did not think it advisable to insert the Convention as such in the Set of Rules as Annex D.2, since the procedure for amending Annexes to the General Agreement (article 9, paragraph 7) was not the same as that for amending the Convention.

DIFFERENCES BETWEEN ARTICLE 5 OF THE CONVENTION AND ANNEX D.1 TO THE SET OF RULES

71. The Working Party found that the differences between article 5 of the Convention and Annex D.1 to the Set of Rules did not make the two texts incompatible, being only differences of form. Nevertheless, it considered that the two texts should be harmonized as soon as possible. During discussion, the point was raised whether, in the light of Annex H.1, there would still be any point in having an Annex D.1 after the Convention had been brought into force. The Working Party took the view that once the General Agreement and the Convention had entered into force Annex D.1 could be eliminated by amending the General Agreement or, if need be, it could be brought into line with the text of the Convention.

ANNEX F.2 TO THE SET OF RULES (TARIFFS FOR THE INTERNATIONAL TRANSPORT OF GOODS)

72. The Working Party took note of the report of the Working Party on the International Road Transport Régime on its eighth session (TRANS/SC1/85, paragraphs 29-33) and the note by the Secretariat (W/TRANS/WP9/33).

73. The United Kingdom representative considered paragraph 8 of the draft Annex F.2. to the Set of Rules to be unnecessary, as in his view the other provisions of the Annex and article 2 of the General Agreement covered the position.

74. The Secretariat representative pointed out that the General Agreement defined the carrier's obligations towards the public authorities, while the Convention regulated private law relationships between the carrier and his customers. It would therefore be illogical to refer in the Convention to compulsory charges; furthermore, the Annexes to the Set of Rules could not logically impose any obligation on consignors.

75. The Working Party took the view that paragraph 8 of Annex F.2 should refer to transport charges only and not to the tariff provisions as a whole. It decided to propose to the Working Party on the International Road Transport Régime the adoption of the following text for paragraph 8:

> "The charges resulting from the application of the tariffs shall take precedence over those fixed in the transport contract."

76. The representative of the Western Zones of Germany, citing his national law as an example, suggested the inclusion of a provision requiring persons who had paid a transport charge amounting to less than the tariff charge to pay over the difference between the former and the latter.

77. The Belgian representative pointed out that the competent Working Party had been given the task of drawing up compulsory international tariffs, and that tariffs imposed under national law were expressions of public policy. The combination of the General Agreement, the Convention and the tariff regulations would thus obviate the necessity for the clause requested by the representative of the Western Zones of Germany.

78. The Working Party supported that view, the representative of the Western Zones of Germany reserving his position for the time being.
